United Nations A/AC.254/5/Add.14

General Assembly

Distr.: General
24 November 1999

Original: Arabic/English

Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
Sixth session
Vienna, 6-17 December 1999
Item 4 of the provisional agenda*
Consideration of the revised draft United Nations Convention against Transnational Organized crime, with particular emphasis on articles 4 *ter*, 17 *bis* and 20-30

Proposals and contributions received from Governments

Addendum

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* A/AC.254/20.

II. Proposals and contributions received from Governments

Netherlands

[Original: English]

Article 22

Prevention at the national level

1. States Parties shall endeavour to take appropriate measures, such as education and vocational training, to shield socially vulnerable groups from recruitment by criminal organizations.

2. States Parties shall seek to reduce existing or future opportunities for criminal organizations to participate in legal markets while acquiring proceeds of criminal offences envisaged in this Convention, through appropriate legislative and/or administrative measures. These measures should focus on:

(a) The prevention of the misuse of legal persons by criminal organizations, by such measures as:

(i) The establishment of public[1] records on legal persons and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility to disqualify by court order for a reasonable period of time persons convicted of criminal offences envisaged in this Convention from acting as directors of legal persons incorporated in their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs (a) (i) and (iii) above with competent authorities in other States Parties;

(b) The strengthening of cooperation between law enforcement agencies or public prosecutors and relevant private entities, including industries;

(c) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular, lawyers, notaries public, tax consultants and accountants; and

(d) The prevention of participation in tender procedures conducted by public authorities of applicants who have been convicted for criminal offences envisaged in this Convention and the prevention of granting subsidies or licences to such applicants.

3. States Parties shall assist persons convicted of criminal offences envisaged in this Convention in their reintegration into society, for example, through treatment, training programmes and aftercare, with a view to reducing recidivism.

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[1] The use of the word "public" is intentional in order to avoid any discussion on confidentiality. Furthermore, the reasoning behind its use is that most legal systems will have records on legal persons that are accessible to the public.

4. Each of the States Parties shall endeavour:

(a) To analyse patterns of and trends in transnational organized crime by systematically gathering information on organized crime within its territory;

(b) To evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to abuse by criminal organizations;

(c) To develop and evaluate national projects aimed at the prevention of transnational organized crime; and

(d) To establish and promote best practices to prevent transnational organized crime.

New Zealand*

[Original: English]

Article 4 ter: Measures against corruption

New Zealand would prefer the first option in the article, being a less prescriptive approach to the treatment of organized crime in this article. The article should recognize the different legal frameworks in various Member States by providing more generally for the element of organized crime to be considered.

Poland

[Original: English]

Article 19

Paragraph 3

1. Paragraph 3 of article 19 should be inserted in article 22 *bis* as paragraph 2 and the present text of article 22 *bis* should become paragraph 1. The proper place for paragraph 3 of article 19 is within the context of prevention at the international and not the national level, for the following reasons: firstly, this provision uses words such as "States Parties shall cooperate", "pursuant to bilateral or multilateral agreements", "exchange information" and "coordinate administrative and other measures", which clearly indicate the international dimension of its subject matter. Secondly, both the language and the substance of this provision are perfectly in line with the language used in article 22 *bis* ("States Parties shall collaborate") and do not fit into the scheme provided for in article 22.

2. In subparagraph (b) of former paragraph 3 of article 19, replace the words "Exchange information in accordance with their national law" with the words "Exchange information and process criminal intelligence using, where appropriate, arrangements provided by the International Criminal Police Organization".

* Comment previously issued in document A/AC.254/L.41.

Article 20

Paragraph 1

3. In the first sentence, after the word "activities", add the words "between each other and through the facilities provided by the International Criminal Police Organization".

4. In the second sentence, replace the words "In this connection," with the words "For this purpose,".

Syrian Arab Republic

[Original: Arabic]

A. Amendment previously issued in document A/AC.254/L.34

Article 4 ter: Measures against corruption

1. Since acts of corruption are necessarily treated as offences in the laws of States, there needs to be provision for more severe punishment for those acts in connection with organized crime. It would therefore be preferable to retain the first option proposed by Uruguay because of its clarity and precision.

B. Further amendments

2. Having reviewed the Arabic version of the revised draft Convention, the Syrian Arab Republic would like to propose amendments to articles 4 *ter*, 17 *bis*, 20-22, 22 *bis*, 22 *ter*, 23, 24, 26 and 27.

Article 4 ter: Measures against corruption

Paragraph 1

3. Remove the square brackets.

Paragraph 2

4. Add the words ", in accordance with its constitutional principles," after the words "shall adopt", in line with article 4 (Money-laundering).

5. Add the words "under its domestic law" after the words "to establish as criminal offences the following conduct", in line with article 4 (Money-laundering).

6. Add the words "within the framework of transnational organized crime" after the words "organized criminal group".

7. Remove the square brackets.

Paragraph 4

8. This paragraph should be revised to read as follows, in line with article 4 (Money-laundering):

> "Each State Party shall also take such measures as may be necessary to establish as criminal offences:

"(a) Participation in the perpetration of any offence provided for in this article;

"(b) Collusion or conspiracy to commit such an offence;

"(c) Initiation or instigation of the perpetration of such an offence; or

"(d) Facilitation of the perpetration of such an offence, provision of assistance in the perpetration of such an offence, or provision of advice to that effect."

Paragraph 4 bis

9. Remove the square brackets.

10. Add the words "within the framework of transnational organized crime" at the end of the paragraph.

Paragraph 5 (b)

11. Delete subparagraph (b), because subparagraph (a) renders it unnecessary.

Paragraph 6

12. Adopt the definition contained in footnote 77, provided that the words "or person" are added after the words "or other official".

Article 17 bis: Bribery of witnesses and intimidation of witnesses and officials

13. Add the words ", in accordance with its constitutional principles," after the words "shall adopt".

14. Add the words ", within the framework of its domestic law" after the words "to establish as criminal offences the following conduct".

15. Remove the square brackets.

16. Add the words "within the framework of transnational organized crime" after the words "organized criminal group".

Subparagraph (b)

17. Replace the words "the exercise of official duties by a justice or security official" with the words "the exercise of official duties by a person or a justice or security official", because the current text is limited to officials and does not cover witnesses.

Article 20: Collection and [exchange] of information on organized crime

Title

18. Remove the square brackets.

Paragraph 2

19. Delete the words between square brackets.

Article 21: Training and technical assistance

Paragraph 5

20. Remove the square brackets.

Article 22: Prevention at the national level

Paragraph 5

21. Delete the paragraph.

Article 22 bis: Prevention at the international level

Paragraph (a)

22. The words "a focal point" need to be clarified.

Article 22 ter: Communications from States Parties

23. The period between square brackets should be fixed at 24 months.

Article 23

24. Adopt option 3.

Article 24: Relation with other conventions

25. Adopt option 1.

Article 26: Signature, ratification, acceptance, approval, accession and reservations

Title

26. Delete the word "reservations".

Paragraph 1

27. Add the words "at the United Nations Office at Vienna" after the words "to all States".

28. The signing period in Vienna should be of three months and should start from the date of adoption of the Convention. For New York the signing period should be one year from the date of adoption.

Paragraphs 3, 4 and 5

29. Paragraphs 3, 4 and 5 should be combined in a separate article entitled "Reservations", with paragraph 4 being deleted and the square brackets in paragraphs 3 and 5 removed.

Article 27: Entry into force

Paragraph 1

30. Replace the words "on the thirtieth day" with the words "on the ninetieth day", in line with article 29, paragraph 1, of the 1988 Convention.

31. The Convention's entry into force should start from the date on which the fortieth instrument of ratification, acceptance, approval or accession is deposited so as to underline the global nature of the Convention.